

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: BAIR HUGGER FORCED AIR      MDL No.: 15-md-02666 (JNE/FLN)  
WARMING PRODUCT LIABILITY  
LITIGATION

This Document Relates To:

PATRICK UPTON,

Plaintiff,

Civil Action No.: 16-CV-02374-JNE-FLN

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**DECLARATION OF DONALD C. GREEN II IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

I, Donald C. Green II, declare as follows:

1. I am an attorney at Kennedy Hodges, LLP and Counsel for Plaintiff Patrick Upton in the above-captioned matter.
2. I submit this affidavit in opposition to Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 filed on August 3, 2017.
3. Mr. Upton contacted Kennedy Hodges, LLP in July of 2015 regarding injuries that were allegedly caused by the Bair Hugger patient warming device.
4. Medical records and billing records pertaining to Mr. Upton's treatment were obtained by Kennedy Hodges through its third party medical records retrieval company. Those records demonstrate use of a Bair Hugger device during his original orthopedic surgery.

5. This case was filed on July 8, 2016 to comply with the statute of limitations deadline.
6. During a phone call on November 7, 2016, Mrs. Donna Upton stated to a Kennedy Hodges staff member that Mr. Patrick Upton had passed away within the last few months. She expressed a desire to continue the case and stated that she would work with us to make sure that we obtained the paperwork and information necessary to move forward.
7. After our last contact with Mrs. Upton on November 7, 2016, numerous phone calls have been placed to Mrs. Upton by staff at Kennedy Hodges in an attempt to reach her and obtain information for the Plaintiff Fact Sheet and the necessary probate paperwork. These calls have gone unanswered, and voice messages left with Mrs. Upton have not been returned.
8. Additionally, several letters have been sent to Mrs. Upton since our last contact with her requesting the information and probate paperwork needed to move forward with the case.
9. Although Mrs. Upton had stated that Mr. Upton has passed away, no death certificate was ever received to confirm Mr. Upton's passing.
10. Based on information and belief, Mrs. Upton has not made any attempt to contact Kennedy Hodges in response to these phone calls and letters to provide the information necessary to complete the Plaintiff Fact Sheet.
11. As we have been unable to obtain the additional information necessary to complete the Plaintiff Fact Sheet for this claim, we have not been able to cure the alleged

deficiencies pertaining to the Plaintiff Fact Sheet that has been submitted for this case.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

August 10, 2017

/s/ Donald C. Green II  
Donald C. Green II